

## REMARKS

### Claim Rejections – 35 U.S.C. § 102

Claims 13, 17, 18, 20, and 24 were rejected under 35 U.S.C. § 102(b) as being anticipated by Kutscher *et al.* (U.S. Patent 6,212,451).

Applicant respectfully requests that the Examiner reconsider the rejection in light of amended Claim 13. Claim 13 has been amended to clarify that the method includes a step of storing a mathematical-physical model in memory of the control unit wherein the mathematical-physical model characterizes cooling and heating properties of the compressor.

MPEP 2131 requires that to anticipate a claim, the reference must teach *every element* of the claim. The following guidance is provided:

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). >“When a claim covers several structures or compositions, either generically or as alternatives, the claim is deemed anticipated if any of the structures or compositions within the scope of the claim is known in the prior art.” *Brown v. 3M*, 265 F.3d 1349, 1351, 60 USPQ2d 1375, 1376 (Fed. Cir. 2001) (claim to a system for setting a computer clock to an offset time to address the Year 2000 (Y2K) problem, applicable to records with year date data in “at least one of two-digit, three-digit, or four-digit” representations, was held anticipated by a system that offsets year dates in only two-digit formats). See also MPEP § 2131.02.< “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). Note that, in some circumstances, it is permissible to use multiple references in a 35 U.S.C. 102 rejection.

In the present case, independent Claim 13 requires the specific step of "storing a mathematical-physical model in memory of the control unit wherein the mathematical-physical model characterizes cooling and heating properties of the compressor".

Applicant respectfully submits that Kutscher *et al.* does not specify the specific step performed in the specific manner that is described in Claim 13. Instead, Kutscher appears to describe an equation that provides calculated on time durations (ED). Col. 4, lines 30-55. For this reason Applicant submits that Kutscher *et al.* does not anticipate Claim 13 and respectfully requests that the Examiner reconsider the 35 USC 102(b) rejection.

Claims 17-18, 20 & 24 depend either directly or indirectly from Claim 13 and are believed to be in a condition for allowance for at least the same reason as Claim 13.

#### **Claim Rejections – 35 U.S.C. § 103**

Dependent claims 15, 19, 21 were rejected under 35 U.S.C. § 103(a) as being unpatentable over anticipated by Kutscher *et al.* (U.S. Patent 6,212,451) in view of Meier *et al.* (U.S. Patent 6,799,950).

Applicant respectfully submits that neither Kutscher nor Meier disclose a step of "storing a mathematical-physical model in memory of the control unit wherein the mathematical-physical model characterizes cooling and heating properties of the compressor" as is provided in amended independent claim 13. As such the combination of Kutscher and Meier can not provide a *prima facie* case of obviousness as their combination does not provide all of the elements of the claimed invention.

## **CONCLUSION**

Applicant believes that all claims are now in proper shape for allowance.

Respectfully submitted,

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